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Washington, D.C.

JAN 10 2003

GENERAL COUNSEL
OF COPYRIGHT

In the Matter of

Distribution of 1998 and 1999
Cable Royalty Funds

Docket No. 2001-8 CARP CD 98-99

**PROGRAM SUPPLIERS' OBJECTIONS TO
DIRECT CASE OF PUBLIC TELEVISION**

Pursuant to section 251.45(b)(2) of the Copyright Arbitration Royalty Panel Rules and Procedures ("CARP Rules") and the Scheduling Order dated October 28, 2002, as amended by the Copyright Office Order dated December 23, 2002, MPAA-Represented Program Suppliers ("Program Suppliers") hereby file their objections to the Direct Case of Public Television ("PBS"). Initially, Program Suppliers seek to compel production of documents that underlie the testimony of PBS, but which PBS has refused to produce. Where appropriate as an alternative, Program Suppliers seek to have the pertinent testimony stricken from the record to the extent PBS fails to provide the underlying documents as ordered.

Program Suppliers rely on certain well-established principles for this Motion. Section 251.45(c)(1) of the CARP Rules provides in relevant part that "parties may request of an opposing party nonprivileged underlying documents related to written exhibits and testimony." The parties' obligations under this rule are articulated further in the Librarian's Order of October 30, 1995.

1. *Limited scope of discovery.* Discovery in CARP proceedings is intended to produce only the documents that

underlie the witness' factual assertions. It is not intended to augment the record with what the witness might have said or put forward, or to range beyond what the witness said. Any augmentation of the record is the prerogative of the arbitrators, not the parties.

For example, articles mentioned in a resume are not discoverable to test whether a witness is being consistent. They are only offered to support the witness' knowledge and experience. Whereas, articles cited within the body of the testimony are discoverable to see whether they, in fact, support the methods being used.

2. *Bottom-line figures must be verified.* Parties who offer bottom-line figures in a CARP proceeding must be prepared to share all the underlying data that contributed to those bottom-line figures, notwithstanding the problems of confidentiality. Each of the data inputs in a survey or study could contain errors or be the source of undercounting for one or more of the Phase I parties, and therefore, they are all important to the process of verification.

Therefore, in a number of rulings, the Office has directed the parties to negotiate in good faith protective orders so that the underlying data can be revealed and confidentiality can be protected.

3. *Underlying data must be furnished in as organized and usable a form as possible.* CARP proceedings operate under tight deadlines. For the proceeding to run smoothly and quickly, all parties must be prepared to furnish to their opposing sides the underlying documents in as organized and usable a form as possible, namely, in computer tapes or discs even when the hard copy has been furnished.

In the Matter of 1990-92 Cable Copyright Royalty Distribution Proceeding, Docket No. 94-3 CARP CD 90-92, at 1-2 (footnote omitted). During discovery, Program Suppliers sought documents underlying specific factual assertions in PBS' testimony. However, in violation of these principles, PBS either failed to provide any underlying

documents, produced non-responsive documents, or did not produce documents in an organized or usable fashion.

Unless otherwise specifically requested below, Program Suppliers request the following: if PBS has underlying documents that it has failed to produce, it should be compelled to produce them. If PBS cannot produce such documents, Program Suppliers request that such testimony be stricken from the record. In those instances where PBS failed to produce documents in an organized or usable manner, Program Suppliers ask that the Librarian compel PBS to produce such documents in an organized or usable manner.

Documents Related to the Testimony of John F. Wilson

1. Program Suppliers have asked PBS to provide all documents underlying the following statement contained in John F. Wilson's Testimony ("JWT"): "In 1998 and 1999, more than 60 public television stations produced programs distributed by PBS." (JWT, at 7, ¶1). Exhibit A, Initial Requests and Responses to Initial Requests ("Exhibit A"), at Wilson, No. C48; Exhibit B, Follow-up Requests and Responses to Follow-up Requests ("Exhibit B"), at Wilson, No. 239. To date, PBS has failed to produce any documents responsive to this request. Because PBS has failed to produce underlying documents, Program Suppliers move to strike this statement from Mr. Wilson's testimony.

2. Program Suppliers have asked PBS to provide all documents underlying the following statement contained in JWT: "In 1998 and 1999, PBS provided its member stations with access to over 2,000 hours of original, first-run programming." (JWT, at 17, ¶2). Exhibit A, at Wilson, No. C106; Exhibit B, at Wilson, No. 241. PBS' response to

this request consists entirely of the e-mail attached hereto as Exhibit C. Program Suppliers followed up their discovery request informing PBS that the document, a conclusory e-mail from a PBS researcher, was not responsive and again asked PBS to produce responsive documents. In its Follow-up Response, PBS refused to produce any additional documents stating: "we believe our initial response was sufficient. We do not believe the testimony for which documentation is sought puts forth a bottom-line number that requires further documentation." Program Suppliers disagree with PBS. First, the statement at issue clearly involves "bottom-line numbers" that may contain errors and consequently need to be verified. The "2000" hours is without question a calculated number. If, as PBS suggests, the rules merely required Program Suppliers to accept the veracity of these numbers based on the unverified representation in an e-mail by a PBS researcher, the documents underlying all bottom-line numbers could be shielded from production simply by placing the number in an e-mail, and having the witness review it.

Second, the e-mail itself, obviously the result of a recent research effort (as indicated by its October 28, 2002 date) strongly suggests the existence of underlying records. The e-mail speaks of "records" from which the hours were compiled. It even distinguishes between "original broadcasts" and "re-up" broadcasts. Moreover, the e-mail suggests the existence of records organized by program type (i.e., "NPS, PLUS, SELECT, and SIP"), by air-time, and by genre. The underlying implication of Mr. Wilson's statement—the magnitude and diversity of program hours available to PBS' member stations—is a critical one that cannot be left unexamined. Third, Mr. Wilson and the PBS researcher are for the purposes of this proceeding the same party because they are both PBS employees. Mr. Wilson thus cannot avoid document production directed at

PBS by passing the buck to another PBS employee. Consequently, unless PBS produces the documents that underlie this statement, Program Suppliers move to strike it from Mr. Wilson's testimony.

3. Program Suppliers have asked PBS to provide all documents underlying the following statement contained in JWT: "In 1998 and 1999, over 50% of the total programming dollars spent by PBS members went to local productions rather than to PBS national programming." (JWT, at 24, ¶2). Exhibit A, at Wilson, No. C128; Exhibit B, at Wilson, No. 244. In response, PBS produced an excerpt from the programming budget. Program Suppliers followed up on its request informing PBS that the excerpt from the programming budget was not fully responsive, and requested that PBS produce the entire document. Exhibit B, at Wilson, No. 244. In its Follow-up Response, PBS stated: "The document provided was the document consulted by the witness. Further underlying documentation is not in the possession or control of PBS. Moreover, we do not believe the testimony for which documentation is sought puts forth a bottom-line number that requires further documentation." Section 251.48(b) of the rules states that when a witness offers excerpts from a document, all other parties are entitled to inspect the full document. *See* Order in Docket No. 94-3 CARP CD 90-92, at 18 (October 30, 1995). Therefore, the Librarian should compel PBS to produce the entire document to Program Suppliers.

4. Program Suppliers have asked PBS to provide all documents underlying the following statement contained in JWT: "[T]he popularity of public television's children's programming increased dramatically since the early 1990s." (JWT, at 31, ¶2). Exhibit A, at Wilson, No. C176; Exhibit B, at Wilson, No. 247. In Response, PBS

produced yet another e-mail from a PBS researcher that merely recites a ratings number. *See* Exhibit D. Program Suppliers followed up on this request and informed PBS that the document provided was not responsive. In its Follow-up Response, PBS stated: "We produced all responsive documents we were able to locate. Any aspect of the witness's testimony that you quoted in your initial request that is not supported by exhibits and produced documents is based on the witness's knowledge and experience and the testimony taken as a whole." Having already provided the e-mail in response to the initial request, PBS essentially has admitted that Mr. Wilson, at least in part, relied on the e-mail. The issue then is the document underlying the conclusory e-mail (*see* No. 2, *supra*). Mr. Wilson's statement and the underlying ratings information presented in the e-mail are an attempt to argue for the increased value of PBS programming since the early nineties. This point goes to the very core of PBS' case and therefore cannot be brushed aside as insignificant. If, as PBS has claimed, there is no additional documentary support for the statement beyond the inadequate e-mail, Program Suppliers move to strike the statement in question. If, on the other hand, PBS can produce the fully responsive documents, Program Suppliers request that the Librarian compel the production of such documents for the reasons set forth in No. 2 above.

5. Program Suppliers have asked PBS to provide all documents underlying the following statement contained in JWT: "PBS offers its member stations more than 2000 hours of original first-run programming each year." (JWT, at 38, ¶1). Exhibit A, at Wilson, No. C226; Exhibit B, at Wilson, No. 251. In Response, PBS produced a document entitled the Public Broadcast revenue report. That report contained no information whatsoever concerning the number or type of programming hours. In

Follow-up Request No. 251, Program Suppliers informed PBS that the produced document did not contain responsive information and requested that PBS produce the underlying documents. In refusing to honor Program Suppliers' follow-up request PBS stated: "we believe our initial response was sufficient. We do not believe the testimony for which documentation is sought puts forth a bottom-line number that requires further documentation." This response is unsatisfactory for several reasons. First, the Public Broadcast Revenue Report is not even remotely relevant because it does not mention anything about original programming hours. Second, the statement in question is substantially similar to the testimony at issue in No. 2 above, for which PBS produced the non-responsive, conclusory e-mail from a PBS researcher. Thus, even if PBS were to claim the conclusory e-mail as the responsive document, the reasons for striking testimony set forth in No. 2 above apply here as well. Consequently, unless PBS produces the documents that underlie this statement, the Copyright Office should strike it from Mr. Wilson's testimony.

6. Program Suppliers have asked PBS to provide all documents underlying *Exhibit 1*, which was referenced in JWT. (JWT, at 6 n.1). Exhibit A, at Wilson, No. D1; Exhibit B, at Wilson, No. 252. To date, PBS has failed to produce any documents responsive to this request. *Exhibit 1* is a one page document--"The Public Broadcasting Service: An Overview"--that contains information under the following six heading: PBS in Brief; PBS Member Stations; The Public Television Audience; PBS Programming Activities; Public TV Funding; and PBS Funding. See Exhibit E. In Follow-up Request No. 252, Program Suppliers informed PBS that CARP Rule § 251.45(c)(1) states that parties may request documents related to a witnesses' testimony *and exhibits* and that

Mr. Wilson clearly references this exhibit in his testimony. Program Suppliers also noted that the exhibit relates to and contains *bottom line* numbers and statistics. Those objections are restated here. If PBS fails to produce underlying documents, Program Suppliers move to strike *Exhibit 1* from Mr. Wilson's testimony.

7. Program Suppliers have asked PBS to provide all documents underlying *Exhibit 2*, which was referenced in JWT. (JWT, at 7 n.2). Exhibit A, at Wilson, No. D2; Exhibit B, at Wilson, No. 253. To date, PBS has failed to produce any documents responsive to this request. *Exhibit 2* is a listing of the claimants represented by PBS, and Program Suppliers have clarified that they are seeking only examples of documents used "to form, maintain, and carry out PBS' representation of the listed claimants." As noted in No. 6 above, CARP Rule § 251.45(c)(1) states that parties may request documents related to a witness' testimony *and exhibits*. Moreover, because Mr. Wilson included factual statements about PBS' representation of these claimants in his testimony, the Librarian should compel PBS to produce the requested exemplary documents. *See* Order in Docket No. 2000-2 CARP CD 93-97, p. 6 (June 28, 2000).

8. Program Suppliers have asked PBS to provide all documents underlying *Exhibit 5*, which was referenced in JWT. (JWT, at 14). Exhibit A, at Wilson, No. D4; Exhibit B, at Wilson, No. 254. To date, PBS has failed to produce any documents responsive to this request. In addition to requesting underlying documents for various statements contained in this exhibit, Program Suppliers sought production of the following specifically identified documents, all of which were identified as enclosures to memos in the exhibit: 1997-1998 Programming Plan; The PBS Programming Plan: 1998-99; The 1998-1999 PBS Communications Plan; Long Lead Program Pipeline document;

and The PBS Programming Plan: 1999-2000. As noted in No. 6 above, CARP Rule § 251.45(c)(1) states that parties may request documents related to a witness' testimony *and exhibits*. Moreover, Program Suppliers note that this exhibit is cited in Mr. Wilson's testimony as containing "significant programming highlights" and that the documents requested are all related to PBS programming. Moreover, one of the requested documents, "The PBS Programming Plan 1998-1999," has already been produced in response to another request. Thus, PBS cannot claim that the requested documents do not exist or are beyond the scope of Mr. Wilson's testimony. If PBS fails to produce underlying documents, Program Suppliers move to strike *Exhibit 5* from Mr. Wilson's testimony.

9. Program Suppliers have asked PBS to provide all documents underlying *Exhibit 6*, which was referenced in JWT. (JWT, at 14). Exhibit A, at Wilson, No. D5; Exhibit B, at Wilson, No. 255. To date, PBS has failed to produce any documents responsive to this request. *Exhibit 6* is a promotional videotape containing information about PBS programming. Program Suppliers requested underlying documents for several statements that appear in the videotape: "Antiques Roadshow the Highest-Rated Weekly Prime-Time Series"; "Arthur Rules Kids TV"; "Those who watch PBS have a better sex life"; and "Kids like to use their heads, to think up all kinds of fun stuff, that is why kids watch us." As noted in No. 6 above, CARP Rule § 251.45(c)(1) states that parties may request documents related to a witness' testimony *and exhibits*. Program Suppliers further note that with respect to Exhibit 6, Mr. Wilson states that he "prepared a videotape, PTV Exhibit 6, which includes programming highlights from these two years and which I intend to show the Panel during my oral testimony." That the entire videotape is meant to

be a part of Mr. Wilson's testimony could not be more clear. Consequently, if PBS does not produce the documents that underlie this video, Program Suppliers move to strike the statements contained within it.

Documents Related to the Testimony of Leland L. Johnson

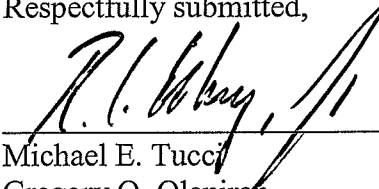
1. Program Suppliers have asked PBS to provide all documents underlying the following statement contained in Leland L. Johnson's Testimony ("LJT"): "WTBS was identified with \$77.8 million in royalty payments in 1997, ... comprising 53% of the \$148.5 million in total distant fees generated." (LJT, at 4). Exhibit A, at Johnson, No. C21; Exhibit B, at Johnson, No. 171. In response, PBS stated it would "produce non-privileged, underlying documents, if any, responsive to this request," and designated PBS Document Nos 38, 39, 40, 41, 42, and 53 as responsive. In Follow-up Request No. 171, Program Suppliers informed PBS that its mass designation of documents did not permit Program Suppliers to locate support for the witness' statement in these documents. Accordingly, Program Suppliers asked PBS to provide greater specificity and direction with regard to the produced documents. PBS refused to honor Program Suppliers' follow-up request. CARP proceedings operate under tight deadlines. Consequently, underlying documents must be furnished in as organized and usable a form as possible, making mass designation inappropriate. Here, 710 documents were designated as responsive to the narrow factual statement at issue. Moreover, the designation included the following disparate document types: CDC Spreadsheets, Mr. Johnson's working papers, a Licensing Division Report of Receipts, and the Report of the Copyright Arbitration Royalty Panel for the 1990-92 Cable Royalty Distribution Proceeding. Unless PBS

provides greater specificity as to which of the designated documents underlie the statement above, the Copyright Office should strike it from Mr. Johnson's testimony.

2. Program Suppliers have asked PBS to provide all documents underlying the following statement contained in LJT: "The removal of WTBS has forced industry-wide adjustments in the fees paid for distant signals and the composition of the signal mix, substantially affecting the size of the pool." (LJT, at 4, ¶2). Exhibit A, at Johnson, No. C22; Exhibit B, at Johnson, No. 172. In response, PBS stated it would "produce non-privileged, underlying documents, if any, responsive to this request," and designated PBS Document Nos. 38, 39, 40, 41, 42, and 53, the same documents noted in No. 1 above, as responsive. In Follow-up Request No. 172, Program Suppliers informed PBS that its mass designation of documents did not permit Program Suppliers to locate support for the witness' statement in these documents. Accordingly, Program Suppliers asked PBS to provide greater specificity and direction with regard to the produced documents. PBS refused to honor Program Suppliers' follow-up request. As noted above, CARP proceedings operate under tight deadlines. Consequently, underlying documents must be furnished in as organized and usable a form as possible, making mass designation inappropriate. Here, 710 documents were designated as responsive to the factual statement at issue. Moreover, the designation included the following disparate document types: CDC Spreadsheets, Mr. Johnson's working papers, a Licensing Division Report of Receipts, and the Report of the Copyright Arbitration Royalty Panel for the 1990-92 Cable Royalty Distribution Proceeding. Unless PBS provides greater specificity as to which of the designated documents underlie the statement above, the Copyright Office should strike it from Mr. Johnson's testimony.

For the reasons stated herein, Program Suppliers ask that the Librarian grant this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. E. Tucci", is written over a horizontal line.

Michael E. Tucci
Gregory O. Olaniran
Robert L. (Bo) Eskay, Jr.
David I. Gold
Stinson Morrison Hecker LLP
1150 18th Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-9100

Attorneys for Program Suppliers

January 10, 2003

Exhibit A

**INITIAL REQUESTS AND RESPONSES
TO INITIAL REQUESTS**

TESTIMONY OF JOHN F. WILSON

C. Please provide all documents and source material that underlie, support, or form the basis of the following statements contained in John F. Wilson's Testimony ("JWT"):

48. "In 1998 and 1999, more than 60 public television stations produced programs distributed by PBS." (JWT, at 7, ¶1)

Response: We will produce non-privileged, underlying documents, if any, responsive to this request.

106. "In 1998 and 1999, PBS provided its member stations with access to over 2,000 hours of original, first-run programming." (JWT, at 17, ¶2)

Response: We will produce non-privileged, underlying documents, if any, responsive to this request.

128. "In 1998 and 1999, over 50% of the total programming dollars spent by PBS members went to local productions rather than to PBS national programming." (JWT, at 24, ¶2)

Response: We will produce non-privileged, underlying documents, if any, responsive to this request.

176. "[T]he popularity of public television's children's programming increased dramatically since the early 1990s." (JWT, at 31, ¶2)

Response: We will produce non-privileged, underlying documents, if any, responsive to this request.

226. "PBS offers its member stations more than 2000 hours of original first-run programming each year." (JWT, at 38, ¶1)

Response: We will produce non-privileged, underlying documents, if any, responsive to this request.

D. Please provide all documents and source material that underlie, support, or form the basis of the following exhibits referenced in JWT:

1. *Exhibit 1.* (JWT, at 6 n.1) Include in your production all documents and source material that underlie, support, or form the basis of any statements

made under the following headings: The Public Television Audience; PBS Programming Activities; Public TV Funding; PBS Funding.

Response: This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding.

2. *Exhibit 2.* (JWT, at 7 n.2) Include in your production examples of all documents used to form, maintain, and carry out PBS' representation of the listed claimants.

Response: This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding.

4. *Exhibit 5.* (JWT, at 14, ¶14) Include in your production all specifically identified documents noted below, as well as all documents and source material that underlie, support, or form the basis of any statements identified below:
 - a) 1997-1998 Programming Plan
 - b) The PBS Programming Plan: 1998-99
 - c) The 1998-1999 PBS Communications Plan
 - d) Long Lead Program Pipeline document
 - e) The PBS Programming Plan: 1999-2000
 - f) "As stated in the 1997-1998 PBS Programming Plan, one of the chief programming goals for the National Program Service is to ensure the strength and momentum of PBS' signature series" (10/9/97 Memo to General Managers, etc., at 1)
 - g) "The first season of ANTIQUES ROADSHOW was one of 1997's success stories, pulling a 3.1 average rating among overnight markets." (10/9/97 Memo to General Managers, etc., at 2)
 - h) "Just as it did quite successfully in the fall, THE AMERICAN EXPERIENCE returns several presidents to the schedule...." (10/9/97 Memo to General Managers, etc., at 2)
 - i) "NOVA's new Winter/Spring season includes a hit for sweeps, *Surviving Everest!*" (10/9/97 Memo to General Managers, at 4)
 - j) "Building on the momentum of last year's successes, PBS is continuing with out key program promotion strategy" (10/9/97 Memo to General Managers, etc., at 5)
 - k) "As stated in the 1997-1998 PBS Programming Plan, one of the chief programming goals for the National Program Service is to ensure the strength and momentum of PBS' signature series" (2/27/98 Memo to General Managers, etc., at 1)

- l) The PBS Programming Plan: 1998-99 "extends the course of action initiated two years ago as part of a four-year effort to revitalize national programming" (5/29/98 Memo to General Managers, etc., at 1)
- m) The Fall 1998 and projected Winter/Spring 1999 schedule "uphold[s] our commitment to the acceleration and growth of our enterprise." (5/29/98 Memo to General Managers, etc., at 8)
- n) "We're adopting several new strategies to achieve our objectives this year and we've identified specific measures of success for each strategic area." (5/29/98 Memo to General Managers, at 9)
- o) "Our program promotion work will focus on building 1) tune-in—to increase the amount of time viewing and using our programs; and 2) program awareness/image—to help close the gap between *actual* viewership of our programs and people's *perceptions* about their viewing behavior." (5/29/98 Memo to General Managers, etc., at 9)
- p) The PBS Programming Plan: 1998-99 "extends the course of action initiated two years ago as part of a four-year effort to revitalize national programming" (10/7/98 Memo to General Managers, etc., at 1)
- q) "We're adopting several new strategies to achieve our objectives this year and we've identified specific measures of success for each strategic area." (10/7/98 Memo to General Managers, at 5)
- r) "We believe this change will create opportunities for new programming and increased audience flow" (2/26/99 Memo to General Managers, etc., at 1)
- s) The PBS Programming Plan: 1999-2000 provides a fresh look at the objectives, strategies, and activities of PBS programming services ... this year's focus is on the expansion of our enterprise through vigorous new initiatives." (5/26/99 Memo to General Managers, etc., at 1)
- t) "The 8:00 PM programs will deliver a strong lead-in to NOVA at 9:00 PM, which will, in turn, bring a sizable audience to FRONTLINE at 10:00." (5/26/99 Memo to General Managers, etc., at 1)

Response: This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding.

- 5. *Exhibit 6.* (JWT, at 14, ¶4) Include in your production, all documents and source material that underlie or support the following:
 - a) references to any media coverage
 - b) references to any awards received
 - c) "Antiques Roadshow the Highest-Rated Weekly Prime-Time Series."

- d) "Arthur Rules Kids TV."
- e) "Those who watch PBS have a better sex life."
- f) "Kids like to use their heads, to think up all kinds of fun stuff, that is why kids watch us."

Response: This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding.

TESTIMONY OF LELAND L. JOHNSON

C. Please provide all documents and source material that underlie, support, or form the basis of the following statements contained in Leland L. Johnson's Testimony ("LJT"):

- 21. "WTBS was identified with \$77.8 million in royalty payments in 1997, ... comprising 53% of the \$148.5 million in total distant fees generated."

Response: We will produce non-privileged, underlying documents, if any, responsive to this request.

- 22. "The removal of WTBS has forced industry-wide adjustments in the fees paid for distant signals and the composition of the signal mix, substantially affecting the size of the pool." (LJT, at 4, ¶2)

Response: We will produce non-privileged, underlying documents, if any, responsive to this request.

Exhibit B

FOLLOW-UP REQUESTS AND RESPONSES TO FOLLOW-UP REQUESTS

TESTIMONY OF JOHN F. WILSON

239. In your response to PS Request No. C48, you state: "We will produce non-privileged, underlying documents, if any, responsive to this request." However, you failed to provide any responsive documents. Please produce the underlying documents.

Response: We were not able to locate documents responsive to your initial request number C48. We will continue to search for a document or documents and will produce any that are located.

241. In your response to PS Request No. C106, you state you "will produce non-privileged, underlying documents, if any, responsive to this request," and designate PBS Document No. 18 as responsive. This document, a conclusory e-mail from a PBS researcher, is not fully responsive. Please produce the remainder of the responsive documents.

Response: We believe our initial response was sufficient. We do not believe the testimony for which documentation is sought puts forth a bottom-line number that requires further documentation.

244. In your response to PS Request No. C128, you state you "will produce non-privileged, underlying documents, if any, responsive to this request," and designate PBS Document No. 31 as responsive. This document, an excerpt from the programming budget, is not fully responsive. Please produce the entire document from which the excerpt is derived and all other related underlying documents.

Response: The document provided was the document consulted by the witness. Further underlying documentation is not in the possession or control of PBS. Moreover, we do not believe the testimony for which documentation is sought puts forth a bottom-line number that requires further documentation.

247. In your response to PS Request No. C176, you state you "will produce non-privileged, underlying documents, if any, responsive to this request," and designate PBS Document No. 20 as responsive. This document is not responsive, as the only mention of a "dramatic increase" in popularity of PBS children's programming is a conclusory e-mail from a PBS researcher. Please produce the underlying documents.

Response: We produced all responsive documents we were able to locate. Any aspect of the witness's testimony that you quoted in your initial request that is not supported by exhibits and produced documents is based on the witness's knowledge and experience and the testimony taken as a whole.

251. In your response to PS Request No. C226, you state you "will produce non-privileged, underlying documents, if any, responsive to this request," and designate PBS Document No. 60 as responsive. This document, a Public Broadcast Revenue Report for FY 1999 is not responsive. Please produce the underlying documents.

Response: We believe our initial response was sufficient. We do not believe the testimony for which documentation is sought puts forth a bottom-line number that requires further documentation.

252. In your response to PS Request No. D1, you fail to provide any documents and state the following: "This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding." We disagree with your objection. CARP Rule § 251.45(c)(1) states that parties may request documents related to a witnesses' testimony *and exhibits*. Mr. Wilson clearly references this exhibit in his testimony. Moreover, the requested material from this exhibit relates to *bottom line* numbers and statistics about which the parties are allowed to seek underlying documentary evidence. Finally, to the extent this exhibit is an excerpt, you must produce the full document from which the excerpt was taken. This is entirely permissible discovery. Please provide responsive documents.

Response: PTV Exhibit 1 is offered only to illustrate the structure of PBS. As our initial response made clear, to the extent Mr. Wilson makes factual assertions in his testimony regarding any numbers that also are contained in the exhibit, we have provided underlying documents in response to those assertions. Finally, the exhibit is not an excerpt but rather a publicly available information sheet created by PBS in the normal course of business.

253. In your response to PS Request No. D2, you fail to provide any documents and state the following: "This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding." We disagree with your objection. CARP Rule § 251.45(c)(1) states that parties may request documents related to testimony *and exhibits*, and Mr. Wilson clearly references this exhibit in his testimony. Among other related documents, we are seeking copies of representation agreements between PBS and the claimants. This is entirely permissible discovery. Please provide responsive documents.

Response: PTV Exhibit 2 is offered simply as a list of PTV claimants. Your initial request seeks improper augmentation of the record. The documents requested are not properly within the limited scope of discovery in this proceeding.

254. In your response to PS Request No. D4, you fail to provide any documents and state the following: "This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding." We disagree with your objection. CARP Rule § 251.45(c)(1) states that parties may request documents related to testimony *and exhibits*, and Mr. Wilson clearly references this exhibit in his testimony. This is entirely permissible discovery. Please provide responsive documents.

Response: PTV Exhibit 5 is the complete document that contains programming highlights and the program schedules referred to in Mr. Wilson's testimony. Your initial request seeks improper augmentation of the record. The documents requested are not properly within the limited scope of discovery in this proceeding.

255. In your response to PS Request No. D5, you fail to provide any documents and state the following: "This request does not seek documents that underlie Mr. Wilson's testimony and therefore goes beyond the proper scope of discovery in this proceeding." We disagree with your objection. CARP Rule § 251.45(c)(1) states that parties may request documents related to testimony *and exhibits*, and Mr. Wilson clearly references this exhibit in his testimony. This is entirely permissible discovery. Please provide responsive documents.

Response: The audio portion of the videotape for which you seek underlying documentation is not offered as a factual assertion of the witness but rather is the original audio accompanying highlight reels produced by PBS in the normal course of business. Your initial request seeks improper augmentation of the record. The documents requested are not properly within the limited scope of discovery in this proceeding.

TESTIMONY OF LELAND L. JOHNSON

171. In your response to PS Request No. C21, you state you "will produce non-privileged, underlying documents, if any, responsive to this request," and designate PBS Document No.s 38, 39, 40, 41, 42, and 53 as responsive. This mass designation of documents without greater specificity is not fully responsive because Program Suppliers cannot locate support for the witnesses' statement in these documents. Please provide greater specificity and direction in this regard.

Response: The document or documents that we specified as responsive to your initial request have been designated with sufficient specificity. Indeed, Public Television provided much more specificity regarding its produced documents than that provided by Program Suppliers regarding documents you produced.

172. In your response to PS Request No. C22, you state you “will produce non-privileged, underlying documents, if any, responsive to this request,” and designate PBS Document Nos. 38, 39, 40, 41, 42, and 53 as responsive. This mass designation of documents without greater specificity is not fully responsive because Program Suppliers cannot locate support for the witnesses’ statement in these documents. Please provide greater specificity and direction in this regard.

Response: The document or documents that we specified as responsive to your initial request have been designated with sufficient specificity. Indeed, Public Television provided much more specificity regarding its produced documents than that provided by Program Suppliers regarding documents you produced.

Exhibit C

Jessee, Russell

From: Glenn Clatworthy [gclatworthy@pbs.org]
Sent: Monday, October 28, 2002 2:22 PM
To: rwalsh@pbs.org
Cc: sgray@pbs.org; shalford@pbs.org; bmarshall@pbs.org; Jessee, Russell
Subject: Re: Fwd: FW: Programming Hours

Our records show 2,014 hours for FY 1998, 2041 hours for FY 1999.

This includes original broadcasts (but not re-up hours) for all NPS, PLUS, SELECT and SIP programs from all time periods, all genres.

Glenn Clatworthy
Director, Program Data & Analysis
Public Broadcasting Service
gclatworthy@pbs.org
(703) 739-5248

Exhibit D

Jessee, Russell

From: Nancy Owen [nowen@pbs.org]
Sent: Tuesday, November 12, 2002 5:01 PM
To: Dove, Ronald; Jessee, Russell
Subject: Fwd: Re: Fwd: PBS KIDS viewing

Follow Up Flag: Follow up
Flag Status: Flagged

Nancy Owen writes:

>"Even with the intensity of commercial activity in this vital area of
>programming, our daily children's viewership increased dramatically since
>the early 1990's."

>
>Has viewership of children's programming increased dramatically from
>early 1990's to 1998-99?

Hi Nancy,

Our daytime ratings among kids 2-11 in the 98-99 were 75% higher than in
90-91 (1.2 in 90-91 up to 2.1 in 98-99).

In the 90-91 season an average of 12.5 million kids 2-11 tuned in to PBS
each week, while in 98-99 this number was at 14 million.

Cory

J. Cory Allen
Assistant Director
PBS Research
(703) 739-5141 (phone)
(703) 739-8656 (fax)
callen@pbs.org

Don't miss the world premiere of SKINWALKERS
An American MYSTERY! Special based on the best-selling novel by Tony
Hillerman.
Sunday, November 24 at 9pm ET on PBS. (check local listings)
www.pbs.org/mystery

Exhibit E

THE PUBLIC BROADCASTING SERVICE: AN OVERVIEW

PBS in Brief

- A private, nonprofit corporation whose members are America's public TV stations.
- Founded in 1969.
- Provides quality TV programming and related services to 350 noncommercial stations serving all 50 states, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.
- 485 staff members in Alexandria, Va., and New York City oversee program acquisition, distribution and promotion; education services; new media ventures; fundraising support; engineering and technology development; and video marketing.

PBS Member Stations

- 171 noncommercial, educational licensees operate 350 PBS member stations.
- Of the 171 licensees, 87 (51%) are community organizations, 55 (32%) are colleges/universities, 21 (12%) are state authorities and 8 (5%) are local educational or municipal authorities.

The Public Television Audience

- The public TV audience reflects the demographic composition of the United States.
- 78.7% of all American television-owning homes – 77.1 million households representing 150.7 million people – watched public TV in October 1997, with the average home tuning in for just over eight hours during the month.
- From October 1997 to March 1998, 96.3 million viewers in 55.7 million homes watched public TV each week, according to the Nielsen Television Index. This represents 56.8% of America's 98.0 million TV households.
- During prime time in this period, public TV was watched each week in 31.4 million homes by 47.5 million people.
- The average viewing household watches just under three hours of public TV a week; about half of that time is spent with prime-time programming.

PBS Programming Activities

- National Program Service – the major package of programs PBS distributes to its member stations. It features television's best children's, cultural, educational, news, public affairs, science, nature and skills programs.
- Adult Learning Service – a partnership, involving PBS stations and colleges, providing college credit TV courses to more than 450,000 students each academic year.
- Programs are obtained from PBS stations, independent producers and sources around the world. PBS does not produce programs.

Public TV Funding

- Public TV's total national, regional and local income in FY96 was \$1.49 billion, according to the Corporation for Public Broadcasting (CPB). Four-fifths (82.2%) came from nonfederal sources, particularly viewers (22.0%), state governments (17.3%) and businesses (15.0%).
- 4.8 million individuals and families contributed \$327.5 million to public TV in FY96.

PBS Funding

- The PBS budget for FY99 (July 1, 1998-June 30, 1999) of \$278 million comes from member stations (49%), educational products and services (20%), CPB (10%), strategic partnerships (7%) and other sources (14%).
- About two-thirds (65%) of PBS's FY99 budget goes to program production, acquisition, promotion and distribution. Program funds administered by PBS represent only a portion of the total cost of PBS's National Program Service (see below).
- In FY97, support for the PBS National Program Service's 2,189 hours of original-broadcast programs amounted to an estimated \$326 million. Sources: PBS stations, 27%; private producers, 21%; corporations, 20%; CPB, 13%; foundations, 10%; federal and state government, 7%; and others, 2%.

July 1998

CERTIFICATE OF SERVICE

I, Gregory O. Olaniran, hereby certify that I have, this 10th day of January, 2003, served a copy of the foregoing document in Docket No. 2001-8 CARP CD 98-99, on the parties listed below, as indicated:

Via e-mail

Robert Alan Garrett
James Cooper
Christopher Winters
555 Twelfth Street, NW
Washington, DC 20004-1206
Counsel for Joint Sports Claimants

Via First Class Mail

Ronald G. Dove, Jr.
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
Counsel for the Public Television Claimants

Via e-mail

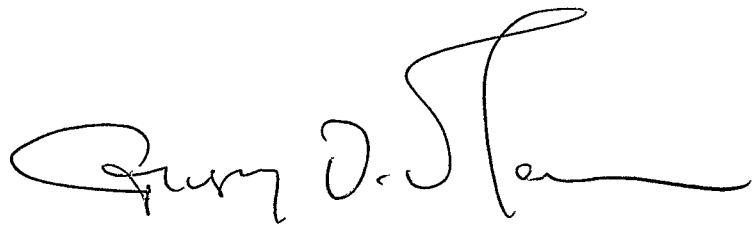
John I. Stewart, Jr.
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Counsel for National Association of Broadcasters

Via e-mail

Michael Remington
Philip Mause
Jeffery J. Lopez
Drinker Biddle & Reath, LLP
1500 K Street, NW
Suite 1100
Washington, DC 20005
Counsel for Music Claimants

Via e-mail

L. Kendall Satterfield
Richard M. Volin
Finkelstein, Thompson & Loughran
1050 30th Street, NW
Washington, DC 20007
Counsel for Canadian Claimants



Gregory O. Olaniran